

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Terrorist Attacks on September 11, 2001

03 MDL 1570 (GBD/FM)

This document relates to: *Estate of John P. O'Neill, Sr., et al. v. The Republic of Iraq, et al.*, 04-CV-1076 (GBD)

Affidavit in Support of Entry of Default Judgment Solely as to Liability Against the Publication Defendants

STATE OF NEW YORK)
)
) ss.:
COUNTY OF NEW YORK)

JERRY S. GOLDMAN, Esquire, being duly sworn, deposes and says:

1. I am a shareholder at Anderson Kill, P.C., attorneys for the O'Neill Plaintiffs in the above-captioned action. I am familiar with the facts and circumstances of this case and am admitted to practice in this Court.

2. I make this Affidavit under Rule 55.2 of the Local Civil Rules of the Southern District of New York, in support of the O'Neill Plaintiffs' application for the entry of default judgment solely as to liability against the defendants listed in **Exhibit 1** (the "Publication Defendants").

3. This is an action to recover damages owed by defendants to the O'Neill Plaintiffs for deaths resulting from the September 11, 2001 terrorist attacks upon the United States (the "September 11th Attacks"). The Publication Defendants have been sued based on their participation in a conspiracy to commit acts of international terrorism against the United States, its citizens and allies, of which the September 11th Attacks were a direct, intended and foreseeable product.

4. Subject matter jurisdiction of this action is based on diversity, 28 U.S.C. § 1332, and federal question jurisdiction, 28 U.S.C. § 1331; the Anti-Terrorism Act, 18 U.S.C. § 2333 *et seq.*, the Air Transportation Safety and System Stabilization Act, Pub. L. 107-42, 115 Stat. 230-242, § 408(b)(1) (Sept. 22, 2001) (reprinted as amended, at 49 U.S.C. § 40101), the Foreign Sovereign Immunities Act, 28 U.S.C. § 1330, 28 U.S.C. §§ 1605(a)(2), 1605(a)(5) & 1605A; the Alien Tort Claims Act, 28 U.S.C. § 1330; the Torture Victim Protection Act, PL 102-256, 106 Stat. 73 (reprinted at 28 U.S.C.A. § 1330 note), and/or 28 U.S.C. § 1367.

5. This action was commenced on August 20, 2003, with the filing of the Complaint in *Estate of John P. O'Neill, Sr., et al. v. Republic of Iraq, et al.* (03-CV-1766 (RBW) (D.D.C.), Docket No. 1). The Second Amended Complaint was filed on December 30, 2004 and is attached hereto as **Exhibit 2**.

6. Service on the Publication Defendants was effectuated pursuant to the September 16, 2004 Order by the Honorable Richard C. Casey permitting certain Plaintiffs in this multi-district litigation to serve certain Defendants by publication (the "Publication Order").¹ Pursuant to the Publication Order, the O'Neill Plaintiffs served the Publication Defendants by publication once per week for four weeks in the International Herald Tribune, USA Today and at least one Arabic language newspaper, as well as by posting on the website www.sept11terrorlitigation.com. The Affidavit of Service is attached hereto as **Exhibit 3**.

¹ The O'Neill Plaintiffs were not named in the original Publication Order but were added to it by Judge Casey upon counsel's request. See Endorsed Letter from Jerry S. Goldman to Honorable Richard C. Casey, October 8, 2004 (03-MD-1570, Docket No. 488) (adding *Estate of John P. O'Neill, Sr., et al. v. The Republic of Iraq, et al.*, 04-CV-1076 (GBD) to Publication Order).

7. The Publication Defendants have not answered or otherwise responded to the Second Amended Complaint, and the time for the Publication Defendants to answer or otherwise respond to the Second Amended Complaint has expired.

8. The Publication Defendants are not infants, in the military, or incompetent persons.

9. On September 1, 2015, the Clerk of the Court entered the Publication Defendants' default. The Clerk's Certificate of Default is attached hereto as **Exhibit 4**.

10. WHEREFORE, the Plaintiffs in *Estate of John P. O'Neill, Sr., et al. v. The Republic of Iraq, et al.*, 04-CV-1076 (GBD), respectfully request the entry of default judgment solely as to liability against the Publication Defendants. A proposed form of default judgment is attached hereto as **Exhibit 5**.

Dated: September 15, 2015
New York, NY



Jerry S. Goldman, Esquire
ANDERSON KILL P.C.
1251 Avenue of the Americas
42nd Floor
New York, NY 10020

Sworn to before me this 18th
Day of September, 2015.



Notary Public
BRUCE ELLIOT STRONG
Notary Public, State of New York
No. 02ST6317690
Qualified in New York County
Commission Expires Jan. 12, 2019